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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/647,904 | 08/25/2003 | Matthew R. Selmon | LMND.P044DC | 2339 |

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COURTNEY STANIFORD & GREGORY LLP
P.O. BOX 9686
SAN JOSE, CA 95157

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| EXAMINER |
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TRUONG, KEVIN THAO

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| ART UNIT | PAPER NUMBER |
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3731

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-----------------|---------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/647,904 | SELMON ET AL. | |
| | Examiner | Art Unit | |
| | Kevin T. Truong | 3731 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 57-88 is/are pending in the application.
- 4a) Of the above claim(s) 58,62,66,67,73,81 and 82 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 57,59-61,63-65,68-72,74-80 and 83-88 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Species of figures 17A and 17B, claims 57, 59-61, 63-65, 68-72, 74-80, and 83-88 in the reply filed on 11/18/2005 is acknowledged.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 57, 59-61, 63-65, 68-72, 74-80, and 83-88 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5-11, 17, 18, 21, and 23-31 of U.S. Patent No. 6,508,825. Although the conflicting claims are not identical, they are not patentably distinct from each other because the relatively broad subject matter claimed in the instant application such as an actuation assembly

positioned along the catheter shaft which causes the movement of opening and closing. As a result, it would have been obvious in view of the relatively detailed subject matter of the patent claims.

4. Claims 57, 59-61, 63-65, 68-72, 74-80, and 83-88 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5-14, and 19-21 of U.S. Patent No. 6,638,247. Although the conflicting claims are not identical, they are not patentably distinct from each other because the relatively broad subject matter claimed in the instant application such as an actuation assembly positioned along the catheter shaft which causes the movement of opening and closing. As a result, it would have been obvious in view of the relatively detailed subject matter of the patent claims.

5. Claims 57, 59, 63-65, 69-72, 77-80, and 86-88 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 8-10, and 13-15 of U.S. Patent No. 6,800,085. Although the conflicting claims are not identical, they are not patentably distinct from each other because the relatively broad subject matter claimed in the instant application such as an actuation assembly positioned along the catheter shaft which causes the movement of opening and closing. As a result, it would have been obvious in view of the relatively detailed subject matter of the patent claims.

6. Claims 57, 69, 70, and 86-88 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 4 of U.S. Patent No. 6,599,304. Although the conflicting claims are not identical, they are not

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patentably distinct from each other because the relatively broad subject matter claimed in the instant application such as an actuation assembly positioned along the catheter shaft which causes the movement of opening and closing. As a result, it would have been obvious in view of the relatively detailed subject matter of the patent claims.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 57, 59-61, 63-65, 68-72, 74-80, and 83-88 are rejected under 35 U.S.C. 102(b) as being fully anticipated by Knoepfler (U.S. 5,300,087).

Knoepfler discloses the claimed invention in figures 1 and 2, a catheter shaft (16) having a lumen (30), moving jaw (41), fixed extension (jaw) (40) and hinge pin assembly (42,44); an actuation assembly (32) positioned along the catheter shaft (16), wherein the actuation assembly (32) causes the moving jaw (41) in contact with tissue of a blood vessel wall to separate material of the vascular occlusion (see col. 4, lines 54-60); wherein the moving jaw (41) and fixed extension (40) including guidewire lumens (45,47); furthermore, wherein the moving jaw (41) spreads by moving through an arc away from the longitudinal axis of the catheter shaft (16) with respect to a fixed pivotal position of a proximal end of the moving jaw (41).

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9. Claims 57, 59-61, 63-65, 68-72, 74-80, and 83-88 are rejected under 35

U.S.C. 102(b) as being fully anticipated by O'Connor (U.S. 5,603,724).

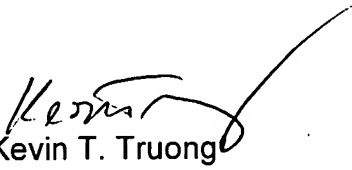
O'Connor discloses the claimed invention in figures 1-5, a catheter shaft (10) having a lumen along the length, moving jaw (30), fixed extension (jaw) (20) and hinge pin assembly (22,42); an actuation assembly (50) positioned along the catheter shaft (10), wherein the actuation assembly (50) causes the moving jaw (30) in contact with tissue of a blood vessel wall to separate material of the vascular occlusion; wherein the moving jaw (30) and fixed extension (20) including guidewire lumens (21,31); furthermore, wherein the moving jaw (30) spreads by moving through an arc away from the longitudinal axis of the catheter shaft (10) with respect to a fixed pivotal position of a proximal end of the moving jaw (30). Note, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin T. Truong whose telephone number is 571-272-4705. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 6:00 PM..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kevin T. Truong
Primary Examiner
Art Unit 3731

ktt